

**TESTIMONY OF
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BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
REGARDING THE
DRAFT INDIAN LAW AND ORDER BILL
JUNE 19, 2008**

Honorable Chairman and members of the Committee, good morning. I very much appreciate this opportunity to offer my remarks regarding the Draft Indian Law and Order bill. By way of introduction, I am Walter Lamar, an enrolled member of the Blackfeet Nation of Montana and a descendant of the Wichita Tribe of Oklahoma, am a former FBI Special Agent and the past Deputy Director of the Bureau of Indian Affairs (BIA) law enforcement program.

It seems every two or three years there is a scathing report decrying the state of Indian country public safety. Over and over the symptoms of a broken system are reiterated, yet we remain where we were yesterday.

In a 1975 BIA law enforcement publication detailing the history of Indian country law enforcement are the following words:

“Civilization has loosened, in some places broken, the bonds which regulate and hold together Indian society ... and has failed to give people law and officers of justice in their place. ... Women are beaten and outraged; men are murdered in cold blood; the Indians ... are intimidated and preyed upon by the evil disposed; children are molested on their way to school ...; but there is no redress... It is a disgrace to our land. It should make every man who sits in the national halls of legislation blush. ...the effect of civil agents, teachers and missionaries are like the struggle of drowning men weighted with lead, as long as by the absence of law Indian society is left without base.” (Bishop William Hobart Hare quoted in an Indian Commission Report dated, 1877)

In the late 1930's a BIA official reported to congress that many characteristics of the Indian criminal justice system remained as they were at the turn of the century. Jails were so inadequate that judges rarely committed anyone.

Budget cuts for Indian country law enforcement were so severe in the late 1940s that by 1950, Senator J. Chandler Gurney, South Dakota, stated, “They cannot have a dance at night

because there is nobody to control the peace of the community Indian Commissioner John R. Nichols told the Senator that the situation in his state existed throughout Indian country. "This is the lowest point in the history of law and order," Nichols said.

Amazing how this sounds so very familiar. Was it, indeed, the lowest point?

The Senate Committee on Indian Affairs is to be applauded for taking this affirmative step forward to ensure the protection of Indian country citizens, visitors and residents. While this draft bill is a commendable and positive step, it is but a first step in addressing a very complex issue. Section 2 of the draft bill, entitled, "Findings; Purposes" clearly encapsulates the devastating issues facing Indian country that have been documented in report after report. A former tribal prosecutor and judge commented to me that this draft bill potentially represents "a dream come true."

As this honorable committee strives to protect Indian Country lives, we must examine the reasons Indian county public safety remains in a state of crisis. Most of the tools outlined in the provisions of the draft bill are already in the hands of the government agencies. So we must then ask why they are not being used to their fullest potential. Is it for lack of will, understanding of the issues or simply a lack of concern? I know there exist examples for all three, but typically it boils down to the issue of funding and resources.

As an example, when I was Deputy Director at BIA law enforcement over four years ago, we could count our headquarters staff on two hands. Little has changed since then. How can they possibly be expected to perform the monumental task at hand with less staff than it takes to run a fast food restaurant? Without attendant funding the provisions of the draft bill will go unanswered.

The draft bill serves to establish the necessary lines of communication and defines areas of required accountability to bring true public safety to Indian country. I will offer a number of comments which will be submitted in my written testimony; however, I will state with regard to the BIA Office of Justice Services; considering the tremendous importance of law enforcement the draft bill should address the need to elevate the Office of Justice Services to the Bureau of Justice Services and properly re-delegate the current Deputy Director position to Director. Further, the Indian Law and Order Commission, is potentially the strongest provision of the draft bill and offers an opportunity to bring together top Indian Country experts to address the complex matters facing our tribal justice programs; however, the provision should encourage the consideration of Indian preference in commission selection.

Section 2., Findings: Purposes., reiterate that the United States holds distinct legal, treaty and trust obligations to provide for the public safety of Indian country. The trust responsibility obligation is negated by the Federal performance based funding requirements of GPRA and PART. How can trust responsibility be effectively carried out when tribes are not provided sufficient funding to perform effectively and are then penalized for the lack of performance? Only through needs based funding initiatives can tribal law enforcement ever reach parity with their state and local counterparts.

Indian country has the capacity to provide effective law enforcement which is demonstrated by tribes that have the financial resources to fund their public safety programs. So it is not a matter if we can – it is a matter of the Federal government meeting its obligation to provide the required funding and resources. It is my hope that this intended legislation will give us that opportunity.

I wonder how many Indian country lives were needlessly lost or harmed just in the time it takes to hold this hearing.

Under Section 2, Findings; Purposes, mention should be made regarding the need for prisoner transport services. With the number of jail closures police officers are taken out of service for extended periods to transport prisoners hundreds of miles to and from jail facilities.

Under Title I, Section 103, it should be noted that the responsibility for background investigations for Special Prosecutors will rest with the DOJ so as not to place undue burden on tribes.

The requirement for the tribal liaisons to provide training sessions and seminars for Special Law Enforcement Commissions is a positive step toward minimizing the backlog of officers requiring the requisite training for SLEC certification.

The elevation of the Office of Tribal Justice to a division and establishment of the Office of Indian Country Crime, overseen by a Deputy Assistant Attorney General at the DOJ will serve to place the rightful priority on Indian country. The DOJ must also move to create specific Indian country prosecutive guidelines that ensure aggressive prosecution, particularly when the crimes relate to drug trafficking.

Title II, Section 202 (d), suggests that the financial resources of each entity to be taken into consideration of the grant process. The idea to incentivize tribal, state and local cooperation is diminished by considering the financial resources of each. Further, it would be appropriate to include verbiage under Section 202 that encourages Federal law enforcement agencies to participate on the DOJ funded teams.

Title III, Section 301(a) needs to clarify the type of training. If the intent is to provide flexibility for Indian country police officers to chose alternatives to the Indian Police Academy

for **basic** law enforcement training then it must further clarify that Tribal officers may opt to attend a state, local or tribal academy; however, BIA Police Officers must continue to be trained as Federal officers at the Indian Police Academy. It should be stressed that all **basic** training for Indian Country police officers must meet or exceed the basic training program of the Indian Police Academy. The Section refers to a National Peace Officer Standard of Training, there is no such standard, as each state has responsibility for developing their individual standards of law enforcement training.

Title III, Section 303., Access to National Criminal Information Databases, must take into consideration that to have a terminal for access to National Criminal Information Databases, tribal law enforcement programs must meet a series of stringent measures intended to safe guard such information. Physical security, trained operators, operator security clearances, and dedicated secure connections all require funding, training and technical assistance. Such funding and training should be managed in the form of the DOJ grant process.

Title III, Section 304., Tribal Court Sentencing Authority contains the provision to empower tribes to impose imprisonment beyond the current one year limitation is an important tool which will potentially lessen the United States Attorney case load while offering sentencing flexibility to tribal court judges. However, there must be a provision to ensure we are not simply warehousing our people. Detention facilities used to house Indian Country inmates must be able to provide culturally sensitive services that include at a minimum, educational programming, workforce integration training, substance abuse treatment and mental health care. The provision to utilize the Bureau of Prisons (BOP) on its face seems to alleviate long-term prisoner housing issues; however, sending Indian Country prisoners to BOP facilities raises concern. Prisoners

will likely be separated from their Native communities by great distance and could be subjected to a more sophisticated and dangerous inmate population.

Title IV, Section 402., Indian Alcohol and Substance Abuse. Recognizing there are unacceptable numbers of Native Americans injured or killed each year from alcohol related traffic accidents, this draft bill must call for the National Highway Safety Administration and BIA Indian Highway Safety's involvement in providing funding for reporting, training, equipment, enforcement and specific prevention initiatives.

Title IV, Section 404., Tribal Jails Program. Recent history has proven that new detention facilities can be constructed; however the issue then reverts to an inability to open the facilities for lack of funding for recruitment, hiring, and training of new staff. In fact the former Director of BIA Law Enforcement, Theodore Quasula informed me that a newly constructed juvenile detention facility on the Hualapai reservation sets empty nearly a year after construction. Juvenile crime on the reservation is rampant to the point that the very juveniles who should be incarcerated in the facility are vandalizing it. Provisions must be in place to ensure appropriate funding is available to staff planned detention construction.

Respectfully submitted,

Walter E. Lamar